IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 27977 of 2006(E)

PETITIONER:

MRS.ROSE JAMES, CHANTHAMKANDATHIL
HOUSE, MEENKUNNAM P.O., MUVATTUPUZHA,
REP. BY HER POWER OF ATTORNEY HOLDER
MR.TONY JOSEPH.

BY ADV. SRI.SAJI VARGHESE
SMT.MARIAM MATHAI

RESPONDENTS:

---

1. THE STATE OF KERALA, REP. BY
SECRETARY TO REVENUE DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT, CIVIL STATION,
KAKKANADU.

3. THE TAHSILDAR,
MUVATTUPUZHA.

4. THE SALES TAX OFFICER,
MUVATTUPUZHA.

5. MR.MAITHEEN.P.A.,
PATTANMAKKUDIYIL, KAVUMKARA,
VELLOORKUNNAM, MUVATTUPUZHA.

6. MRS.JASMINE, W/O.MAITHEEN.P.A.,
PATTANMAKKUDIYIL, KAVUMKARA, VELLOORKUNNAM,
MUVATTUPUZHA.

7. YOUSUPH, S/O.ABDUL KHADIR,
PATTANMAKKUDIYIL, KAVUMKARA, VELLOORKUNNAM,
MUVATTUPUZHA.

8. P.A.SHAJI, S/O.ALIYAR,
PALATHINKAL, KAVUMKARA, VELLOORKUNNAM,
MUVATTUPUZHA.

9. SALIM, S/O.PAREETH,
CHAKKALAKKAL, KAVUMKARA, VELLOORKUNNAM,
MUVATTUPUZHA.

10. ASEENA, W/O.SALIM, CHAKKALAKKAL,
KAVUMKARA, VELLOORKUNNAM, MUVATTUPUZHA.

BY ADV. SRI.PEEYUS A.KOTTAM
SRI.BOBBY JOHN
SRI.P.N.DAMODARAN NAMBOODIRI
ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/07/2007, ALONG WITH WPC NO. 32055 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 27977/2006

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE SALE DEED NO.1549/99 DATED 31/3/99 OF MUVATTUPUZHA SRO.

P2 : COPY OF THE NOTICE DATED 22/02/2006 ISSUED BY THE 3RD RESPONDENT PROPOSING TO ATTACH THE PROPERTY OF PETITIONER.

P3 : COPY OF REPLY DATED 09/03/06 SUBMITTED BY THE PETITIONER.

P4 : COPY OF THE DECISION OF THE 3RD RESPONDENT DATED 10/04/06 REJECTING THE REPRESENTATION OF THE PETITIONER.

P5 : COPY OF THE NOTICE OF PUBLIC AUCTION OF THE PROPERTY OF THE PETITIONER, ISSUED BY THE 3RD RESPONDENT.

P6 : COPY OF THE REPRESENTATION DATED 13/10/2006 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT WITH COPY TO THE 3RD RESPONDENT.

P7 : COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) No. 3794/2006.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) Nos. 27977 & 32055 of 2006

Dated, this the 23rd day of July, 2007

J U D G M E N T

Petitioner in WP(C) No. 32055/2006 is challenging penalty levied under Section 45A of the KGST Act for evasion of sales tax dues for the assessment year 1998-99. The penalty stands reduced in first revision and is confirmed by the Commissioner through Ext.P5 order in second revision. The defaulter transferred property to the petitioner in WP(C) No. 27977/2006 and the said property is proceeded against for recovery by virtue of operation of Section 26A of the KGST Act. The transferee has a case that the defaulter has transferred other properties to close relatives such as his wife, brother etc. Therefore, according to her in preference to the property purchased by her, the said properties should be proceeded against on equitable grounds.

2. I have heard learned counsel for the petitioners and learned Government Pleader for the respondents. Penalty is seen levied for non-payment of sales tax on fire wood sold by the petitioner to M/s. Tata Tea Ltd. It is seen that the first revisional authority reduced the penalty to an amount equivalent to tax

payable. Learned counsel for the petitioner submitted that the Department accepted payment of around Rs. 26,012/- and surcharge thereon which are paid by M/s.Tata Tea Ltd. towards purchase tax on same turn over, and in spite of the same reduction was not granted while levying penalty on petitioner. Even though other grounds raised by the petitioner challenging for penalty order are not tenable, I find force in the contention that the purchaser has paid Rs. 26,012/- towards tax under Section 5A of the KGST Act. Section 5A applies only when tax is not paid or payable by the seller. In the circumstances and since petitioner is not a regular dealer, I dispose of the writ petition No. 32055/2006 modifying Ext.P1 penalty order, confirmed in Exts.P2 & P5 orders of the revisional authority, by reducing the penalty to Rs. 75,000/-, but on condition that petitioner will remit the same exclusive of interest under Sec.23(3) on or before 10/09/2007. I make it clear that the reduction in penalty and waiver of penal interest is granted on condition of payment as above and if petitioner does not remit the amount as above, relief granted in the form of reduction in penalty and waiver of penal interest will stand automatically vacated and recovery proceedings will be initiated for recovering entire balance

arrears with interest. The amount paid so far will be adjusted and balance only need be paid by the petitioner exclusive of interest.

3. So far as WP(C) No. 27977/2006 is concerned, there is no need to proceed against the property purchased by the said petitioner from the defaulter, if liability is settled as above and in that event, RR proceedings should be withdrawn. However, if defaulter fails to make payment, then recovery proceedings will be continued and in that case, there will be direction to the recovery authority to proceed with attachment and sale of property transferred by the defaulter to the near relatives like wife, brother etc. after notice to them and recovery proceedings against the petitioner in WP(C) No. 27977/2006 will be continued only if full amount is not recovered by sale of other properties.

These writ petitions are disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg